U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16965277

Date: MAY 28, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a martial arts athlete, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that he had received a major, internationally recognized award, or, in the alternative, met at least three of the ten initial evidentiary criteria for this classification. We dismissed the Petitioner's appeal, and two subsequent combined motions to reopen and to reconsider.

The matter is now before us on a third combined motion to reopen and reconsider. On motion, the Petitioner submits new evidence along with copies of previously submitted evidence. The Petitioner describes the new evidence and asserts that we did not sufficiently consider evidence submitted earlier.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition or the initial dismissal of the appeal. Instead, the filing is a motion to reopen and reconsider our most recent decision.

III. ANALYSIS

The issue before us is whether the Petitioner has submitted new facts to warrant reopening the proceeding, or established that our decision to dismiss his second motion to reopen and reconsider was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

A. Procedural History

The Petitioner holds a [redacted] black belt in the [redacted] style of karate, having competed at various levels since 2002. The Petitioner joined [redacted]'s national karate team in 2012, and claimed to still be a member of that team in 2018 although he had been in the United States in 2017 as a B-1 visitor, a nonimmigrant classification that does not include employment authorization.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he had received a major, internationally recognized award, or, in the alternative, that he satisfied at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(v)(i)-(x). Specifically, the Director found that he met none of those criteria. After a *de novo* review of the record, we reached the same conclusions and dismissed the Petitioner's appeal in May 2019.

The Petitioner then filed two combined motions to reopen and to reconsider. We dismissed both combined motions, in April 2020 and November 2020 respectively. The matter is now before us on a third combined motion to reopen and to reconsider, which includes a one-page statement, two letters, copies of documents, and photographs from a competition in [redacted] Japan. Some of these materials are copies of materials that the Petitioner submitted previously.

B. Motion to Reopen

On motion, the Petitioner submits photographs from a [redacted] competition that took place in [redacted] in 2014, which the Petitioner previously termed a "world championship." The Petitioner has claimed that he won a gold medal at the 2014 event, and thereby received a major, internationally recognized award as contemplated by 8 C.F.R. § 204.5(h)(3). We devoted a full page of discussion to this issue in our May 2019 appellate decision. In our November 2020 motion decision, we stated:

> While the record contains evidence related to the Petitioner's participation in a competition in [redacted] in [redacted] 2014, it does not support [the] claim that this was a world championship event in karate, that the Petitioner won a gold medal at the event, or that the [redacted] national karate team received a bronze medal at the event.

The photographs from the event do not intrinsically establish the significance of the competition or recognition of prizes awarded there.

The motion includes a new letter from the president of [redacted] Florida. The Petitioner states that the letter "provid[es] details about the championship that took place in [redacted] Japan." The meaning of parts of the letter is not entirely clear. The letter reads, in part:

> In 2014 [the Petitioner] returned to meet us in [redacted] Japan and it is very good highlight that [the Petitioner] won Gold Medal in the [redacted] World Championship.

> The world championship of [redacted] is held once every five years and has prestigious tournament in the world.
>
> . . . .
>
> [The Petitioner] took part in the group of eighteen and up age, where he won the title of the world champion by winning all his competitors.
>
> It is considerable, that he won the well-known athlete, who represented Japan. It is a great result, that he won the Japan athlete during the world championship holding in Japan.

The owner of the club in Florida does not claim or establish authority to speak on behalf of the organizers of the [redacted] event. As a result, his comments are not strong evidence that the event was a world championship competition — not every international match is a world championship — or that the Petitioner won a gold medal at the event. The submitted photographs show the Petitioner holding a small trophy and a certificate, but there is no medal visible. The translation of the certificate calls the Petitioner "the champion of the private championship of boys," but does not indicate that he won a world championship title.

We note that the Florida club owner asserts that the Petitioner "took part in the group of eighteen and up age," but the Petitioner was 17 years old in [redacted] 2014 when the event took place (hence the certificate's reference to the "championship of boys"). This apparent error casts further doubt on the individual's reliability as a source of factual information about the event.

If the Petitioner's title at the 2014 [redacted] competition is a major, internationally recognized prize as he claims, then it is reasonable to expect evidence that the Petitioner's performance at the event received significant international attention at the time. A letter from a third party, written six years after the fact, does not establish such recognition.

Apart from the letter discussed above, the Petitioner states: "I am also submitting evidence that I am recognized as a well-known person by the Facebook." The Petitioner does not identify the evidence that supports this claim. The exhibits submitted on motion do not include any printouts from Facebook, or statistics showing that his Facebook page has a sizeable following, consistent with sustained acclaim. The exhibits submitted on motion do not include any evident references to Facebook at all.

The Petitioner has not established good cause for reopening the proceeding, and therefore we will dismiss the Petitioner's motion to reopen.

C. Motion to Reconsider

In order to warrant reconsideration, the Petitioner must establish that our decision to dismiss his previous combined motion to reopen and reconsider was based on an incorrect application of law or USCIS policy and was incorrect at the time of that decision.

The Petitioner's second motion, filed in May 2020, included a letter from the president of the [redacted] National Karate Federation. In our November 2020 decision, we determined that the Petitioner had apparently submitted this letter "to address the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and the leading and critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii)." We determined that the letter does not "elaborate on the selection process for [redacted] national team members. Therefore, it does not overcome our previous determination that the record lacks evidence that membership on the team requires outstanding achievements as judged by recognized national or international experts." We also concluded that the record did not corroborate the official's "claim that [the 2014 [redacted] competition] was a world championship event in karate, that the Petitioner won a gold medal at the event, or that the [redacted] national karate team received a bronze medal at the event."

In his latest motion, the Petitioner states:

> I am submitting documentation to show that the decision rendered did not consider the evidence already in the record, specifically, that the [redacted] National Karate Team is well recognized by the Ministry of Sports and Education in [redacted], that the letter from the president of [the [redacted] Karate Federation . . . provided detailed explanation and description on the election process of the members to the National Karate Team and my role in it.

The Petitioner does not elaborate further on the above points.

Although the Petitioner now asserts that the letter contains a "detailed explanation and description [of] the election process of the members to the National Karate Team," we can find no such explanation or description in the letter, and the Petitioner does not quote any such passage from the letter.

The letter does discuss the nature of the Petitioner's role on the team, but we devoted two paragraphs of our November 2020 decision to that subject. The Petitioner does not explain how we erred in our prior decision in this respect. The general assertion that we did not give the letter enough consideration is not sufficient to warrant reconsideration.

The motion does not meet all the requirements of a motion to reconsider, and 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the prior motion. We will therefore dismiss the motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.